

# MAINE STATE LEGISLATURE

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March 18, 1963

Earle R. Hayes, Executive Secretary

Maine State Retirement System

George C. West, Deputy

Attorney General

**Status of Third Class, State Aid, and Special Resolve Highway Work**

You state that a question has been raised as to the eligibility for credits under the retirement system of certain individuals who are employed on Third Class, State Aid, and Special Resolve highway work.

You call attention to an opinion rendered by Ralph W. Farris, Attorney General, under date of June 3, 1946, in which he concluded that he would "consider the employees on Third Class highways and Special Resolve work to be state employees for the purposes of the State Employees' Retirement System, if they see fit to contribute."

Without attempting to in any way overrule the opinion of Mr. Farris, I would call to your attention two opinions, copies of which are attached. One opinion, dated February 24, 1943, was written by Frank A. Farrington, Deputy Attorney General. I would call your attention in particular to item 3:

"Assuming that the employment is regular, it is the opinion of this department that the method of payment would not be material, since compensation is paid by the State."

The second opinion is one dated February 28, 1955, by James Glynn Frost, Deputy Attorney General. I would call to your attention the so-called rule of thumb setting forth certain requirements to be considered by the Board in determining whether an individual is an employee of the state.

It may be entirely possible that some persons who have been employed on certain highway work would be state employees, while other persons employed on other projects under the same general class of highway work could not qualify as state employees. Each individual employee must be governed by the particular facts of his own case.

It is not possible for this office to rule as to whether a certain class or group of employees are, in fact, "employees" as defined by section 1 of chapter 63-A.

March 18, 1963

As indicated by this office in the two opinions above, and in an opinion which I rendered to you previously on ERA Prior Service Credits, a determination of whether a person is entitled to belong to the Retirement System should be judged on the individual merits of each case by the Board of Trustees. The Board of Trustees should set up certain criteria within the framework of the definition of "employee" in section 1, and if persons come within that framework they may become members of the retirement system. If they do not, they cannot so become members as state employees.

George C. West  
Deputy Attorney General

GCW:R